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8 *BAC Home Loans Servicing, LP, improperly*
named as Bank of America

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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 GERALD B. NETZKY, and DIANNA
13 NETZKY, husband and wife,

14 Plaintiffs,

15 vs.

16 BANK OF AMERICA, a Delaware Corporation;
17 MTC FINANCIAL INC. a California
18 Corporation, d/b/a TRUSTEE CORPS, a
California Corporation,

19 Defendants.

Case No.: 2:11-cv-00128-PMP-LRL

**STIPULATED REQUEST
TO STAY DISCOVERY**

(First Request)

20 It is stipulated and requested by and between Plaintiffs Gerald B. Netzky and Dianna Netzky,
21 Defendant BAC Home Loans Servicing, LP, improperly named as Bank of America, ("BAC") by
22 and through its attorneys, the law firm of Akerman Senterfitt, LLP, and Defendant MTC Financial
23 Inc., d/b/a/ Trustee Corps, ("MTC") by and through its attorneys, the law firm of Robinson
24 Belaustegui Sharp and Low that the discovery period in this case be stayed pending a decision on
25 Defendants' motions to dismiss [Dkts. 4 and 20] currently set for hearing on June 6, 2011. The
26 Parties stipulate and agree to submit a proposed discovery plan and scheduling order within ten (10)
days of a decision on the pending motions to dismiss.

27 BAC filed a Petition for Removal on January 24, 2011 [Dkt. 1.] BAC filed its Motion to
28 Dismiss [Dkt. 4] on January 31, 2011. MTC filed its Motion to Dismiss [Dkt. 20] on February 25,

2011. Plaintiffs responded to the motions to dismiss and filed an Amended Complaint on April 1, 2011 [Dkts. 28, 29, and 30]. Defendant MTC Financial, Inc. filed a motion to dismiss Plaintiffs' amended complaint on April 15, 2011 [Dkt. 33]. Plaintiffs have stipulated to extend the deadline for Defendant BAC to respond to their Amended Complaint [Dkts. 35 and 38].

The Ninth Circuit has affirmed stays of discovery in cases like this one where a stay would prevent excessive cost and burden and enhance judicial economy. *See, e.g., Rutman* 829 F.2d at 738; *B.R.S. Land Investors*, 596 F.2d at 353; *Wood v. McEwan*, 644 F.2d 797, 801-02 (9th Cir. 1981) (affirming stay of discovery pending ruling on a Rule 12(b)(6) motion to dismiss); *In re Graphics Processing Units Antitrust Litig.*, 2007 WL 2127577, at *4 (N.D. Cal. July 24, 2007) (reasoning that "allowing discovery prior to sustaining a complaint would defeat one of the rationales of *Twombly*, at least when the discovery would be burdensome").

Courts have found that "stays [of discovery] are often deemed appropriate where the motion to dismiss can resolve the case—at least as to the moving party." *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 331, 337 (N.D. Ill. 2005); *see also Institut Pasteur v. Chiron*, 315 F. Supp. 2d 33, 37 (D.D.C. 2004) (it is "well settled that discovery is generally considered inappropriate while a motion that would be thoroughly dispositive of the claims in the complaint is pending") (internal quotations omitted). Rather than impose on the parties the substantial time and expense of conducting discovery necessary in this case and burden the Court with resolving discovery disputes, the sounder practice is to stay discovery until Defendants' motions to dismiss are decided.

This Court has broad discretion to stay proceedings in order to control its docket and ensure proper adjudication of litigation. *See Mediterranean Enters., Inc., v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983); *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936) (noting that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants").

In order to meet its obligations under Rule 26(a), the Parties will be required to expend significant resources, and these resources will be needlessly spent if the Court dismisses the claims against Defendants. Moreover, Plaintiffs cannot realistically conduct discovery until the Defendants have answered their Complaint or Amended Complaint. The Answers will frame the issues in such

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1 a manner that Plaintiffs can first decide on their method and content of discovery. Therefore, the
2 Parties stipulate to and respectfully request a stay of discovery pending a decision on Defendants'
3 motions to dismiss [Dkts. 4 and 20] currently set for hearing on June 6, 2011.

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This request is not made for purposes of delay or to prejudice any party in this action.

DATED this 12th day of May, 2011.

DATED this 12th day of May, 2011.

AKERMAN SENTERFITT LLP

GERALD B. NETZKY

/s/ Diana S. Erb

/s/ Gerald B. Netzky

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DATED this 12th day of May, 2011.

DATED this 12th day of May, 2011.

ROBISON BELAUSTEGUI SHARP & LOW

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/s/ Michael E. Sullivan

/s/ Dianna Netzky

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MTC Financial Inc. dba Trustee Corps.

ORDER

IT IS SO ORDERED this _ 13th day of May, 2011.

Handwritten signature of Philip M. Giv in black ink.

UNITED STATES DISTRICT COURT JUDGE